

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976, 12:01 a.m., the Financing Agreement described below has been assigned to the Consolidated Rail Corporation by the Trustees of:

Erie Lackawanna Railway Company
Midland Building
Baltimore, Maryland 21201

The Financing Agreement is a Conditional Sale Agreement , dated April 1, 1971

bearing the ICC recordation number 6122

The payee's name and address is:

The Cleveland Trust Company
900 Euclid Avenue
Cleveland, Ohio

This Notice of Assignment has been placed in the file of the ICC recordation number listed above and the entire assignment is contained in the ICC recordation file stamped in the margin of this assignment. A copy hereof will be promptly mailed to the payee listed above for distribution to the beneficial holder(s) of the Financing Agreement described in this Notice of Assignment.

Consolidated Rail Corporation

April 22, 1971

Richard Jackson, Esquire
Vice President - Law
Erie Lackawanna Railway Company
1336 Midland Building
Cleveland, OHIO 44115

RE: Your file 1000.54 (Transaction No. 71-2),
Conditional Sale Agreement between Pullman
Incorporated and Erie Lackawanna Railway
Company, etc., dated April 1, 1971

Dear Mr. Jackson:

This has reference to the subject document recorded in this office on April 21, 1971, at 9:15 a.m., and acknowledged by our letter of the same date.

Because of a clerical error, the recordation number originally assigned has been discovered to be incorrect. The correct number is Recordation No. 6121, same date and time. The Commission's records have been corrected, and it will be greatly appreciated if you will correct your copies accordingly.

The Commission regrets this unfortunate clerical error and any inconvenience caused your company. Appropriate corrective measures have been taken to prevent its happening again.

Sincerely,

Robert L. Cswald
Secretary

6122
RECORDATION NO. 918 Filed & Recorded

APR 21 1971 -9 15 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

between

GREENVILLE STEEL CAR COMPANY, AS SELLER

and

ERIE LACKAWANNA RAILWAY COMPANY, AS BUYER

dated as of April 1, 1971

AGREEMENT AND ASSIGNMENT

between

GREENVILLE STEEL CAR COMPANY,
AS MANUFACTURER

and

THE CLEVELAND TRUST COMPANY, AS ASSIGNEE

dated as of April 1, 1971

Covering 250 65'-6" 70-Ton Gondola Cars

TRANSACTION 71-1

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of April 1, 1971, between the Seller, party of the first part, and ERIE LACKAWANNA RAILWAY COMPANY, a Delaware corporation (hereinafter sometimes called the Buyer), party of the second part.

WHEREAS, the Buyer proposes to acquire from the Seller certain railroad equipment;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Appended hereto and made a part hereof is Exhibit A. All of the matter found in Exhibit A which is relevant to the material found in this Conditional Sale Agreement is deemed to be and is incorporated herein as if set forth at large.

2. The Seller hereby agrees to construct, sell and deliver to the Buyer, and the Buyer hereby agrees to purchase from the Seller and to pay for the equipment as set forth in Exhibit A.

Seller's obligation as to time of delivery is subject, however, to delays due to accident, fire, flood, explosion, labor troubles, acts of the Government, including embargoes, priorities and allocations, war and war conditions, delays of carriers or delays or defaults of subcontractors or in receipt of materials or to any other cause or causes (whether or not of the same kind as herein specifically enumerated and whether or not existing as of the date hereof) beyond the Seller's reasonable control, each of which causes is hereafter referred to as a "force majeure." The equipment, during construction, shall be subject to inspection by an inspector or other authorized representative of the Buyer and the Buyer may keep one or more inspectors or representatives at the plant of the Seller during the construction of the equipment to inspect and accept the same upon delivery. Upon completion and delivery of each unit of equipment by the Seller it shall be inspected by such inspector or representative and, if such unit of equipment conforms to the requirements hereof, such inspector or representative shall promptly deliver to the Seller a certificate (hereinafter called the Certificate of Ac-

ceptance) in respect to such unit of equipment, stating that such unit of equipment has been inspected and is accepted by him on behalf of the Buyer as conforming in all respects to the requirements and provisions of this Agreement and such Certificate of Acceptance shall constitute conclusive evidence that such unit of equipment has been constructed and conforms to the requirements of this Agreement. As and when accepted, the equipment shall become subject to the terms and provisions of this Agreement as if delivered and accepted simultaneously with the execution and delivery of such Certificate of Acceptance.

On delivery of each of the units of equipment hereunder, the Buyer will assume with respect thereto the responsibility and risk of loss.

The Seller warrants the equipment hereunder to the extent set forth in Exhibit A.

If the equipment is not delivered and accepted on or before the "terminal date" specified in Exhibit A, regardless of the reason therefor, the provisions of this Agreement shall be inoperative as to such undelivered equipment, without any penalty whatsoever. Each unit of equipment which is delivered and accepted in the manner provided in this Section 2 on or before said terminal date, shall be paid for by the Buyer in accordance with Section 3 hereof. In the event this Agreement shall be inoperative as to any of the equipment not delivered and accepted on or before said terminal date, the Buyer and the Seller agree to execute (a) an agreement supplemental hereto limiting this Agreement to the equipment delivered and accepted on or before said terminal date, (b) a separate agreement providing for the purchase by the Buyer of such excluded equipment on completion and delivery thereof, at the price and in accordance with provisions effective under the specifications referred to in Exhibit A, except that the Buyer may arrange to purchase and pay for such excluded equipment under a conditional sale agreement, equipment trust, or other financing plan with terms acceptable to the Seller, and providing for and assuring payment of the full price thereof in cash to the Seller promptly after completion and delivery thereof.

From and after the delivery of the equipment by the Seller to the Buyer under the terms and conditions of this Agreement, the Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the equipment and the use thereof upon the lines of railroad in the possession or control of the Buyer or operated by it under lease or otherwise or over which it has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic. The Buyer may receive such compensation for such use from any corporation so using the equipment as the Buyer may determine; provided, however, that the right to such use shall be subject to all the terms and conditions of this Agreement.

3. The base purchase price of the equipment shall be the amount set forth in Exhibit A; provided, however, that such base price may be increased or decreased as to any unit of equipment prior to the delivery thereof, (i) upon any modification of the specifications for such unit of equipment made pursuant to agreement of the Buyer and the Seller or (ii) in the event of change in the cost of materials applicable to such unit of equipment.

Upon the delivery and acceptance of all of the equipment (or each group of units of equipment if so specified in Exhibit A), as conclusively evidenced by the delivery of a Certificate of Acceptance in respect thereof, the Buyer agrees to pay the purchase price for each unit of equipment as follows:

(a) With respect to each unit of equipment, included in the equipment, or the group thereof as the case may be, an amount up to but not exceeding the unit price for each unit of equipment as set forth in Exhibit A, depending upon final determination of the base price as provided in the preceding paragraph, shall be paid to the Seller in such number of instalments, with such interest on unpaid balances as is set forth in Exhibit A.

(b) The balance of the purchase price of each unit of equipment in excess of the sum stated in the preceding paragraph (a) shall be paid to the Seller upon presentation of the invoice for such unit of equipment supported by the Certificate of Acceptance in respect of such unit of equipment.

All payments hereinabove provided for shall be made by the Buyer to the Seller at its office as specified in Exhibit A, or at such bank or trust company as the Seller and Buyer may agree upon, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts. All payments hereinabove provided for shall be made to seller, or after assignment by seller, to the assignee at the city of the bank or trust company designated by this assignee.

4. The Seller's rights under this Agreement, except its rights to manufacture, may be assigned as a whole or in respect of any unit of equipment. Upon any such assignment, the Seller shall give written notice to the Buyer together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee. The Seller's assignee, or any successive assignee, shall, to the extent of such assignment, be entitled to all the rights of the Seller hereunder with respect to the equipment covered by such assignment; provided, however, that no such assignment shall subject any assignee to, or relieve Seller from any of its obligations as to the construction and delivery of the equipment or in respect to any of its obligations contained in Sections 2 and 10, or relieve the Buyer from its obligations to the Manufacturer under the first paragraph of Section 5 and under Section 10 hereof.

In the event that this Agreement is assigned by the Seller, or reassigned by any assignee as herein provided, the rights of such assignee shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller in respect of the manufacture or delivery of the equipment, or in respect of any of Seller's obligations contained in Sections 2 and 10 hereof, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by the Seller. The Buyer does hereby indemnify any such assignee against all claims arising out of the ownership or use of the equipment.

If this Agreement shall have been assigned by the Manufacturer and the Assignee shall fail to make payment to the

Manufacturer of the deferred purchase price of the equipment on the date provided for payment in such Assignment, the Manufacturer will promptly notify the Buyer of such event, and if the Assignee's default in making payment of such amount shall not have been previously cured by the Assignee, the Buyer will, not later than ninety (90) days after such payment date, pay or cause to be paid to the Manufacturer the aggregate deferred purchase price of the equipment delivered to the Buyer, together with interest from such due date of payment to the date of payment by the Buyer at the prime commercial rate of interest of the Assignee, as defined in Exhibit A, in effect at the time of such payment by the Buyer.

The term "Seller," whenever used in this Agreement, means, before any assignment of any rights of the Seller hereunder as hereinbefore provided in this Section 4, the manufacturer of the equipment, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also the assignor as regards any rights hereunder that are retained and excluded from such assignment.

5. The Buyer agrees that, until it has paid in full the purchase price of the equipment and has paid all other sums of money payable by it hereunder, it will keep the equipment numbered with identifying road numbers; will cause each side of each unit of equipment to be plainly marked by stencil, with the name of the then owner of such unit of equipment followed by the words "Owner," in letters not less than one inch in height, and will renew any such marking, which may become illegible wholly or in part; will keep the equipment in good order and repair at its own proper cost and charge; will comply with all laws and regulations of any governmental authority with reference to the equipment or the manner of using or operating the same; will, subject to the provisions of Section 10 hereof, indemnify and save the Seller harmless from any and all liabilities, damages, claims, suits, judgments and costs that may arise from the use or operation of the equipment after its acceptance by the Buyer, which covenant of indemnity shall survive the full payment of the indebtedness or the transfer of

title to the equipment, as provided in Section 7 hereof, or the termination of this Agreement in any manner whatsoever; and all payments to be made by the Buyer hereunder will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state or federal taxes (other than income, gross receipts, excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by this Agreement, or any use, payment, shipment, or delivery under the terms hereof, all of which expenses, taxes and licenses the Buyer assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the equipment. The Buyer will also pay all taxes and assessments which may be imposed upon the equipment or for the use or operation thereof by the Buyer or upon the earnings arising therefrom or upon the Seller solely by reason of its ownership thereof and will keep at all times all and every part of the equipment free and clear of all taxes and assessments, or any encumbrance which might in any way affect the title of the Seller or result in a lien upon any unit of equipment; provided, however, that the Buyer shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind, so long as it is contesting the same in good faith and by appropriate legal proceedings and the nonpayment thereof does not in the opinion of the Seller adversely affect the property or rights of the Seller hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Seller directly and paid by the Seller, the Buyer shall reimburse the Seller on presentation of invoice therefor; provided, however, that the Buyer shall not be obligated to reimburse the Seller for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Seller shall have been legally liable in respect thereof, or unless the Buyer shall have approved the payment thereof. The Buyer agrees, upon the Seller's request, at least once in every year during the continuance of this Agreement, to furnish an accurate inventory of the equipment, whether

"DEFERRED PURCHASE PRICE" is the purchase price described in paragraph 3(a) of the Conditional Sale Agreement. Interest will be determined on the basis of a 360 day year of twelve 30 day months. "Prime rate" above referred to shall be deemed to mean the prime commercial rate of the Assignee as defined in this Exhibit, and the interest rate will change on the date when the said Assignee's prime rate changes.

THE "LEGEND" referred to in Section 5 and Section 6 of the Agreement and Assignment shall be and read "The Cleveland Trust Company, Owner".

"CLOSINGS"—The settlements to be made in respect of each Group of equipment under the Conditional Sale Agreement shall be made not more than 10 days after each of the following events shall have taken place: (i) all units of equipment in Group I shall have been delivered (closing one); and (ii) all units of equipment of Group II shall have been delivered (closing two).

"GOVERNING LAW"—The terms of the Conditional Sale Agreement and of the Agreement and Assignment and all rights and obligations thereunder shall be governed by the laws of the State of Ohio.

"DEFAULT"—A "default" entitling the Seller to the rights and remedies provided for in the aforesaid Conditional Sale Agreement shall include the events specified in Section 9 thereof.

“WARRANTY”—The Seller guarantees the equipment to be at the time of delivery free of defects in workmanship or material. The Seller will repair or replace f.o.b. its works or warehouse any part furnished by it which by reason of defects in workmanship or material requires replacement within one year after the delivery of the equipment and notwithstanding that such equipment may have been inspected by an inspector or other authorized representative of the Buyer; provided, however, that it is understood that the Seller does not guarantee materials or parts specified or furnished by the Buyer and not made or furnished by the Seller in the normal course of its manufacturing business. The Seller’s liability (except as to title) arising out of the supplying of each of the units of equipment or their use, whether on warranties or otherwise, shall not in any case exceed the cost of repairing or replacing a defective part or parts as herein provided and shall not include transportation charges, the Buyer’s labor or materials (except as authorized in writing in advance), loss of use or revenue or any indirect or consequential damages. Upon the expiration of said one year, all such liability with respect to the equipment or any part or parts thereof repaired or replaced by reason of this guaranty shall terminate.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER’S PART, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS EQUIPMENT.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:

F B Dwyer
Assistant Secretary.

MANUFACTURER

By *G C Brecht*
Vice President.

Attest:

John W. Hall
Secretary.

ASSIGNEE

By *Wm. A. L. Smith*
Vice President.

STATE OF PENNSYLVANIA,
COUNTY OF MERCER, SS.

On this *13th* day of April, 1971, before me personally appeared *G. C. Buecht*, to me personally known, who being by me duly sworn, says that he is a Vice President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

LEORA SMITH, Notary Public

GREENVILLE, MERCER COUNTY

My Commission Expires Feb. 21, 1973

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

On this *15th* day of April, 1971, before me personally appeared *James E. Robertson*, to me personally known, who being by me duly sworn, says that he is a Vice President of The Cleveland Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Robertson
Notary Public

My Comm. Exp. 4-24-74

3. The Manufacturer covenants and agrees that it will construct the equipment in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Railroad free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, and in accordance with the provisions thereof; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will be the lawful owner of each of the units of equipment upon construction thereof and that it has good and lawful right to sell the equipment as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever, based on claims originating prior to the delivery of the equipment by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

4. The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, the purchase price or to enforce any provision thereof, the Manufacturer will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim of the Railroad arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any of the Manufacturer's obligations in respect of the manufacture or delivery of the equipment under Sections 2 and 10 of the Conditional Sale Agreement or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. The Manufacturer shall have no liability under the foregoing sentence unless (a) the Assignee, in any suit, proceeding or action by the Assignee hereinabove described,

promptly moves or takes other appropriate action on the basis of Section 4 of the Conditional Sale Agreement, to strike any such defense, set-off or counterclaim asserted by the Railroad and the Court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action to strike and accepts such defense, set-off or counterclaim as a tryable issue in such suit, proceeding or action, and (b) upon any such denial and acceptance, the Assignee promptly notifies the Manufacturer of any such defense, set-off or counterclaim asserted by the Railroad and the Manufacturer is given the right by the Assignee to compromise, settle or defend against, at the Manufacturer's expense, such defense, set-off or counterclaim. The Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of the equipment built by the Manufacturer, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right except in cases of designs specified by the Railroad, and articles and materials specified by the Railroad and neither included in the Manufacturer's standard specifications nor manufactured by the Manufacturer.

5. The Manufacturer covenants and agrees that, at or before delivery of each of the units of equipment to the Railroad, there will be plainly marked by stencil on each side of each such unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

6. The Assignee covenants and agrees that when all of the equipment (or each group of equipment as may be specified in Exhibit A) covered by the Conditional Sale Agreement and not excluded by reason of delivery after the terminal date as defined in Exhibit A is delivered to, and accepted by, the Railroad, pursuant to the Conditional Sale Agreement, it will pay to the Manufacturer an amount up to but not exceeding the purchase price per unit of equipment as set forth in Exhibit A for each unit of

equipment so delivered and accepted, upon receipt by the Assignee of the following documents with respect to the respective units of equipment, in form and scope satisfactory to it.

(a) A Bill of Sale from the Manufacturer to the Assignee transferring to the Assignee title to the equipment so delivered and accepted and warranting that at the time of delivery thereof by the Manufacturer to the Railroad said title was free and clear of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement.

(b) A Certificate of Acceptance in respect of the equipment signed by an authorized representative of the Railroad stating that the equipment covered by such Certificate has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement and further stating that there was plainly marked by stencil on each side of each unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

(c) A duplicate of the Manufacturer's Invoice covering the equipment so accepted.

(d) An opinion of counsel for the Railroad, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement assigned to the Assignee by this Agreement and Assignment, (iii) title to the equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (iv) no approval or authorization of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (v) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of Assignee within the United States of America, (vi) the legal opinion

referred to in subparagraph (e) of this Section 6 is satisfactory in form and scope to said counsel and in his opinion the Assignee is justified in relying thereon, and (vii) the Railroad is a duly organized and existing corporation in good standing under the laws of Delaware, its State of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted.

(e) An opinion of counsel for the Manufacturer stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Railroad) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iii) this Agreement and Assignment has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Assignee) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iv) except as provided in the Conditional Sale Agreement and in the Agreement and Assignment, the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement, and (v) title to the equipment has been validly vested in the Assignee, and that the equipment, at the time of delivery thereof to the Railroad, was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; counsel may qualify the opinion specified in clauses (ii) and (iii) above by a general reference to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights.

(f) A Certificate from the Secretary or Assistant Secretary of the Railroad as to the incumbency of the officers of the Railroad who signed any documents in connection with this transaction and as to the authenticity of their signatures.

“WARRANTY”—The Seller guarantees the equipment to be at the time of delivery free of defects in workmanship or material. The Seller will repair or replace f.o.b. its works or warehouse any part furnished by it which by reason of defects in workmanship or material requires replacement within one year after the delivery of the equipment and notwithstanding that such equipment may have been inspected by an inspector or other authorized representative of the Buyer; provided, however, that it is understood that the Seller does not guarantee materials or parts specified or furnished by the Buyer and not made or furnished by the Seller in the normal course of its manufacturing business. The Seller’s liability (except as to title) arising out of the supplying of each of the units of equipment or their use, whether on warranties or otherwise, shall not in any case exceed the cost of repairing or replacing a defective part or parts as herein provided and shall not include transportation charges, the Buyer’s labor or materials (except as authorized in writing in advance), loss of use or revenue or any indirect or consequential damages. Upon the expiration of said one year, all such liability with respect to the equipment or any part or parts thereof repaired or replaced by reason of this guaranty shall terminate.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER’S PART, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS EQUIPMENT.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:

F B Dwyer
Assistant Secretary.

MANUFACTURER

By *G C Brecht*
Vice President.

Attest:

John W. Hall
Secretary.

ASSIGNEE

By *Wm. A. L. Smith*
Vice President.

STATE OF PENNSYLVANIA,
COUNTY OF MERCER, SS.

On this *13th* day of April, 1971, before me personally appeared *G. C. Buecht*, to me personally known, who being by me duly sworn, says that he is a Vice President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

LEORA SMITH, Notary Public
GREENVILLE, MERCER COUNTY
My Commission Expires Feb. 21, 1973

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

On this *15th* day of April, 1971, before me personally appeared *James E. Robertson*, to me personally known, who being by me duly sworn, says that he is a Vice President of The Cleveland Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Robertson
Notary Public
My Comm. Exp. 4-24-74

3. The Manufacturer covenants and agrees that it will construct the equipment in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Railroad free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, and in accordance with the provisions thereof; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will be the lawful owner of each of the units of equipment upon construction thereof and that it has good and lawful right to sell the equipment as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever, based on claims originating prior to the delivery of the equipment by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

4. The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, the purchase price or to enforce any provision thereof, the Manufacturer will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim of the Railroad arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any of the Manufacturer's obligations in respect of the manufacture or delivery of the equipment under Sections 2 and 10 of the Conditional Sale Agreement or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. The Manufacturer shall have no liability under the foregoing sentence unless (a) the Assignee, in any suit, proceeding or action by the Assignee hereinabove described,

"DEFERRED PURCHASE PRICE" is the purchase price described in paragraph 3(a) of the Conditional Sale Agreement. Interest will be determined on the basis of a 360 day year of twelve 30 day months. "Prime rate" above referred to shall be deemed to mean the prime commercial rate of the Assignee as defined in this Exhibit, and the interest rate will change on the date when the said Assignee's prime rate changes.

THE "LEGEND" referred to in Section 5 and Section 6 of the Agreement and Assignment shall be and read "The Cleveland Trust Company, Owner".

"CLOSINGS"—The settlements to be made in respect of each Group of equipment under the Conditional Sale Agreement shall be made not more than 10 days after each of the following events shall have taken place: (i) all units of equipment in Group I shall have been delivered (closing one); and (ii) all units of equipment of Group II shall have been delivered (closing two).

"GOVERNING LAW"—The terms of the Conditional Sale Agreement and of the Agreement and Assignment and all rights and obligations thereunder shall be governed by the laws of the State of Ohio.

"DEFAULT"—A "default" entitling the Seller to the rights and remedies provided for in the aforesaid Conditional Sale Agreement shall include the events specified in Section 9 thereof.

“WARRANTY”—The Seller guarantees the equipment to be at the time of delivery free of defects in workmanship or material. The Seller will repair or replace f.o.b. its works or warehouse any part furnished by it which by reason of defects in workmanship or material requires replacement within one year after the delivery of the equipment and notwithstanding that such equipment may have been inspected by an inspector or other authorized representative of the Buyer; provided, however, that it is understood that the Seller does not guarantee materials or parts specified or furnished by the Buyer and not made or furnished by the Seller in the normal course of its manufacturing business. The Seller’s liability (except as to title) arising out of the supplying of each of the units of equipment or their use, whether on warranties or otherwise, shall not in any case exceed the cost of repairing or replacing a defective part or parts as herein provided and shall not include transportation charges, the Buyer’s labor or materials (except as authorized in writing in advance), loss of use or revenue or any indirect or consequential damages. Upon the expiration of said one year, all such liability with respect to the equipment or any part or parts thereof repaired or replaced by reason of this guaranty shall terminate.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER’S PART, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS EQUIPMENT.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:

F B Dwyer
Assistant Secretary.

MANUFACTURER

By *G C Brecht*
Vice President.

Attest:

John W. Hall
Secretary.

ASSIGNEE

By *Wm. A. L. Smith*
Vice President.

STATE OF PENNSYLVANIA,
COUNTY OF MERCER, SS.

On this *13th* day of April, 1971, before me personally appeared *G. C. Buecht*, to me personally known, who being by me duly sworn, says that he is a Vice President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

LEORA SMITH, Notary Public

GREENVILLE, MERCER COUNTY

My Commission Expires Feb. 21, 1973

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

On this *15th* day of April, 1971, before me personally appeared *James E. Robertson*, to me personally known, who being by me duly sworn, says that he is a Vice President of The Cleveland Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Robertson
Notary Public
My Comm. Exp. 4-24-74

3. The Manufacturer covenants and agrees that it will construct the equipment in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Railroad free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, and in accordance with the provisions thereof; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will be the lawful owner of each of the units of equipment upon construction thereof and that it has good and lawful right to sell the equipment as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever, based on claims originating prior to the delivery of the equipment by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

4. The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, the purchase price or to enforce any provision thereof, the Manufacturer will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim of the Railroad arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any of the Manufacturer's obligations in respect of the manufacture or delivery of the equipment under Sections 2 and 10 of the Conditional Sale Agreement or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. The Manufacturer shall have no liability under the foregoing sentence unless (a) the Assignee, in any suit, proceeding or action by the Assignee hereinabove described,

promptly moves or takes other appropriate action on the basis of Section 4 of the Conditional Sale Agreement, to strike any such defense, set-off or counterclaim asserted by the Railroad and the Court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action to strike and accepts such defense, set-off or counterclaim as a tryable issue in such suit, proceeding or action, and (b) upon any such denial and acceptance, the Assignee promptly notifies the Manufacturer of any such defense, set-off or counterclaim asserted by the Railroad and the Manufacturer is given the right by the Assignee to compromise, settle or defend against, at the Manufacturer's expense, such defense, set-off or counterclaim. The Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of the equipment built by the Manufacturer, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right except in cases of designs specified by the Railroad, and articles and materials specified by the Railroad and neither included in the Manufacturer's standard specifications nor manufactured by the Manufacturer.

5. The Manufacturer covenants and agrees that, at or before delivery of each of the units of equipment to the Railroad, there will be plainly marked by stencil on each side of each such unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

6. The Assignee covenants and agrees that when all of the equipment (or each group of equipment as may be specified in Exhibit A) covered by the Conditional Sale Agreement and not excluded by reason of delivery after the terminal date as defined in Exhibit A is delivered to, and accepted by, the Railroad, pursuant to the Conditional Sale Agreement, it will pay to the Manufacturer an amount up to but not exceeding the purchase price per unit of equipment as set forth in Exhibit A for each unit of

equipment so delivered and accepted, upon receipt by the Assignee of the following documents with respect to the respective units of equipment, in form and scope satisfactory to it.

(a) A Bill of Sale from the Manufacturer to the Assignee transferring to the Assignee title to the equipment so delivered and accepted and warranting that at the time of delivery thereof by the Manufacturer to the Railroad said title was free and clear of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement.

(b) A Certificate of Acceptance in respect of the equipment signed by an authorized representative of the Railroad stating that the equipment covered by such Certificate has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement and further stating that there was plainly marked by stencil on each side of each unit of equipment, in letters not less than one inch in height, a legend as set forth in Exhibit A.

(c) A duplicate of the Manufacturer's Invoice covering the equipment so accepted.

(d) An opinion of counsel for the Railroad, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement assigned to the Assignee by this Agreement and Assignment, (iii) title to the equipment is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (iv) no approval or authorization of any governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, (v) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of Assignee within the United States of America, (vi) the legal opinion

referred to in subparagraph (e) of this Section 6 is satisfactory in form and scope to said counsel and in his opinion the Assignee is justified in relying thereon, and (vii) the Railroad is a duly organized and existing corporation in good standing under the laws of Delaware, its State of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted.

(e) An opinion of counsel for the Manufacturer stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Railroad) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iii) this Agreement and Assignment has been duly authorized, executed and delivered by the Manufacturer and (assuming it has been duly authorized, executed and delivered by the Assignee) is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iv) except as provided in the Conditional Sale Agreement and in the Agreement and Assignment, the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement, and (v) title to the equipment has been validly vested in the Assignee, and that the equipment, at the time of delivery thereof to the Railroad, was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; counsel may qualify the opinion specified in clauses (ii) and (iii) above by a general reference to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights.

(f) A Certificate from the Secretary or Assistant Secretary of the Railroad as to the incumbency of the officers of the Railroad who signed any documents in connection with this transaction and as to the authenticity of their signatures.

(g) A Certificate from the Secretary or Assistant Secretary of the Manufacturer as to the incumbency of the officers of the Manufacturer who signed any documents in connection with this transaction and as to the authenticity of their signatures.

(h) Railroad's Certificate as to Appointment of Inspectors and Authorized Representatives.

(i) A certified copy of the Resolution adopted by the Board of Directors of the Railroad which authorizes the transaction.

(j) A certified copy of the Resolution adopted by the Board of Directors of the Manufacturer which authorizes the transaction.

7. If the equipment is not delivered and accepted on or before the "terminal date" as defined in Exhibit A, regardless of the reason therefor, the provisions of this Agreement and Assignment shall be inoperative as to such undelivered equipment, without any penalty whatsoever. Each of the units of equipment so delivered and accepted in the manner provided in Section 2 of the Conditional Sale Agreement on or before the terminal date, shall be paid for by the Railroad in accordance with Section 3 thereof and be covered by this Agreement and Assignment.

It is understood and agreed that the Assignee shall not be required to make (i) any payment in respect of any unit of equipment excluded from the Conditional Sale Agreement or (ii) any payment under this Agreement and Assignment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement shall constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment required to be made with respect to each unit of the equipment pursuant to Section 6 hereof at the time therein specified, the Assignee, shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of equipment with respect to which payment has not been made by the Assignee.

8. It is mutually agreed that the Assignee may assign its rights under the Conditional Sale Agreement, as a whole or in respect of any of the equipment including the right to receive any payments due or to become due to it from the Railroad thereunder in respect of such equipment. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

9. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

10. The parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, as amended.

11. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience as of the date first hereinabove written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Attest:

F. B. Dwyer
Assistant Secretary.

MANUFACTURER

By *G. C. Brecht*
Vice President.

Attest:

John W. Hall
Secretary.

ASSIGNEE

By *Wm. A. L. Smith*
Vice President.

STATE OF PENNSYLVANIA,
COUNTY OF MERCER, SS.

On this *13th* day of April, 1971, before me personally appeared *G. C. Buecht*, to me personally known, who being by me duly sworn, says that he is a Vice President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

LEORA SMITH, Notary Public
GREENVILLE, MERCER COUNTY

My Commission Expires Feb. 21, 1973

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

On this *15th* day of April, 1971, before me personally appeared *James E. Robertson*, to me personally known, who being by me duly sworn, says that he is a Vice President of The Cleveland Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Robertson
Notary Public
My Comm. Exp. 4-24-74

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Erie Lackawanna Railway Company hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment as of the date thereof.

ERIE LACKAWANNA RAILWAY COMPANY

By


Vice President

RECORDING AND FILING DATA

EXECUTED COUNTERPART OF THE FOREGOING CONDITIONAL SALE AGREEMENT AND AGREEMENT AND ASSIGNMENT WAS RECORDED IN THE OFFICE OF THE SECRETARY OF THE INTERSTATE COMMERCE COMMISSION ON _____, 1970 AT _____, _____ M. BY RECORDATION NUMBER _____, PURSUANT TO THE PROVISIONS OF SECTION 20(c) OF THE INTERSTATE COMMERCE ACT.